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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

Nos. 430 and 834
(Consolidated)

SAM ACHILLI, *Petitioner*,

v.

UNITED STATES OF AMERICA.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR REHEARING

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PETITION FOR REHEARING

I

The opinion of the Court in this case has adopted the arguments of the Government with respect to the inapplicability of Section 3616(a) to income tax evasion. In so resting its decision, we believe that the Court may have fallen into serious error.

The Court's view of Section 3616(a) is based on its historical derivation and background. The Court's opinion begins with and projects from the following observation:

> "Section 3616(a) goes back to the Revenue Act of 1798, 1 Stat. 580, 586, when excise taxes and custom duties were the main sources of federal

> revenue. Being general in scope, this section was applicable to the first federal taxes on income, from 1861 to 1871, and again in 1894; those income tax laws made no separate provisions for punishing their evasion. See, *e.g.*, the Act of 1861, 12 Stat. 292, 309; the Act of 1894, 28 Stat. 509, 553."

In so concluding, the Court has, we believe, fallen into error.

The Act of 1798, as the Government has admitted in its brief, "was no federal income tax." (P. 17). The Act of 1861, imposing an income tax did not, as this Court concluded, rely upon any provision contained in the Revenue Act of 1798, but contained its own penalty provision. Sections 16, 49-51, c. 45, 12 Stat. 292, 298, 309. The 1862 Act, which also imposed an income tax, also contained separate penalty provisions, and did not rely upon the provision contained in the 1798 Act. The Act of July 1, 1862, as amended, Section 9, c. 119, 12 Stat. 432, 435. And the 1864 Act, which also imposed an income tax, also contained its own penalty provisions, and did not rely on the provision of the 1798 law. The Act of June 30, 1864, as amended, Sections 15, 116-123, c. 173, 13 Stat. 223, 227, 281. The Act of 1894, imposing an income tax, contained no criminal sanctions, since, by that time—in 1874—Section 3179 of the Revised Statutes had been enacted into general law, and clearly applied to income tax.

Briefly speaking, therefore, the preliminary basis on which the Court's opinion in the instant case is founded, appears to be factually incorrect.

This Court also appears to have fallen into serious error in its conclusion that Section II(F) of the 1913 Act impliedly repealed *pro tanto* Section 3179 of the Revised Statutes of 1874, and that Section 3179 was

"obviously inconsistent with Section II(F)." There is in fact no "different story" with respect to the 1913 Act in comparison with the pattern of criminal sanctions in the Acts of 1861-1871 and again in 1894. These Revenue Acts, as above indicated, did not rely on any provision contained in the Revenue Act of 1798. In plain fact, each of these Revenue Acts contained its own penalty provision:

(1) Act of 1861, Section 16 (12 Stat. 292, 298), made it a misdemeanor to file a "false . . . return . . . with intent to defeat or evade the tax", using language similar to the 1798 Act and the later Section 3179.

This provision applied to all taxes imposed by this Act, including an income tax.

(2) Act of July 1, 1862, Section 9 (c. 119; 12 Stat. 432, 435), and the Act of June 30, 1864, Section 15 (c. 173, 13 Stat. 223, 227), also imposed criminal penalties for filing a "false return" with intent to defeat or evade taxes imposed by those Acts.

The criminal penalty provision applied to all taxes imposed, including an income tax.

(3) Act of 1894, however, contained no criminal penalty provision at all, but relied on Section 3179 which in 1874 had been enacted into general law. It was derived, with minor changes in phraseology, from Section 15 of the 1864 Act.[1] This 1894 Act also imposed an income tax; and clearly Section 3179 applied.

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[1] Section 3179 reads as follows: "Whenever any person delivers or discloses to the collector or deputy any false or fraudulent list, return, account, or statement, with intent to defeat or evade the valuation, enumeration, or assessment intended to be made, or being duly summoned to appear to testify, or to appear and produce such books as aforesaid, neglects to appear or to produce said books, he shall be fined not exceeding one thousand dollars, or be imprisoned not exceeding one year, or both, at the discretion of the court, with costs of prosecution."

While it is true that Section II(F)[2] of the 1913 Act applied solely to income taxes imposed under that Act, Congress did not set any pattern in this respect. Congress provided separate criminal penalties for income taxes in 1916, 1917, 1918 and 1921,[3] but thereafter, up to the Revenue Act of 1928, criminal penalties were made applicable to all forms of taxes.[4] Thus, the general criminal provisions of these later Acts would have the effect of completely nullifying Section 3179, but nothing that Congress did during this period indicates a repeal by implication. Certainly one general statute cannot be said to repeal another general statute, especially where the one statute of general application (Section 3179) applies only to the filing of a false return by anyone or the filing of a false "statement" by anyone.

We suggest that this conclusion is particularly emphasized by the special application of these criminal provisions.

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[2] Section II(F), 38 Stat. 114, 171, Tariff Act of 1913: "That if any person . . . liable to make the return or pay the tax aforesaid shall refuse or neglect to make a return at the time or times hereinbefore specified in each year, such person shall be liable to a penalty of not less than $20.00 nor more than $1,000.00. Any person . . . required by law to make, render, sign or verify any return who makes any false or fraudulent return or statement with intent to defeat or evade the assessment required by this section to be made shall be guilty of a misdemeanor, and shall be fined not exceeding $2,000.00 or be imprisoned not exceeding one year, or both. . . ."

[3] Revenue Act of 1916, Section 18, c. 463, 39 Stat. 756; Revenue Act of 1917, Section 1004, c. 63, 40 Stat. 300, 325; Revenue Act of 1918, Section 253, Title II, 40 Stat. 1057, 1085; Revenue Act of 1921, Section 253, Title II, 42 Stat. 227, 268.

[4] Revenue Act of 1924, Section 1017(a) and (b), c. 234, 43 Stat. 253, 344; Revenue Act of 1926, Section 1114(a) and (b), c. 27, 44 Stat. 9, 116.

Beginning with the Revenue Act of 1913, the Court's attention is directed to the fact that Section 3179 and Section II(F) were not in necessary conflict.

Section 3179 applied to two things: (1) anyone who delivers a false return or statement; and (2) matters relating to the production of books or testimony.

Section II(F) of the 1913 Act applied only to "any person *required* by law to make [a] return." Thus, as to the first subject covered by Section 3179, the prohibition went further than Section II(F), in that it would include agents acting for the taxpayer, such as an accountant who makes and delivers a false return, or "statement" in support of a return either accompanying the return or at a later date in connection with a review of the return. Thus, Section II(F) did not repeal Section 3179 as to income taxes.

Also, as to the second subject covered by Section 3179, it is apparent that Section II(F) did not purport to deal with that subject. That was brought into the scope of the income tax provisions by Section II(L), making "administrative and general tax provisions" applicable to income taxes. It seems clear, therefore, that the 1913 Act did not repeal *pro tanto* Section 3179 as to income taxes. This is further emphasized by the general scope of the criminal provisions of the later 1924 and 1926 Revenue Acts. These later Acts would not only repeal *pro tanto* Section 3179, but completely nullify it. Yet the section was incorporated by Congress in the 1939 Code, and again in the 1954 Code, with an important modification.

We believe the Court erred in its statement that repeal *pro tanto* by Section II(F) of the 1913 Act "is further demonstrated by the fact that §§ 3167, 3172,

3173 and 3176 of the Revised Statutes . . . were specifically incorporated, as modified, into § II but § 3179 was not." Section II(I) of the 1913 Act states: "That Sections 3167, 3172, 3173 and 3176 of the Revised Statutes of the United States, as amended, are hereby amended so as to read as follows:" We respectfully suggest that this language does not incorporate these sections of the Revised Statutes into Section II and make them applicable solely to income taxes. Congress did no more by the language quoted than to amend these sections in the manner set out. Instead of demonstrating any repeal of Section 3179 by this language, we think it emphasizes that Congress had no intention of modifying the effect of Section 3179 by the language of Section II(F).

As we have pointed out above, Section 3179 applied not only to the filing of a false return, but to this matter of production of books and the giving of testimony. Section 3616(b) of the 1939 Code quotes verbatim the language of that portion of Section 3179 relating to the production of books and the giving of testimony. In none of the Revenue Acts up to the codification in 1939 [5] did Congress specifically provide for the production of books or the giving of testimony other than in Section 3179. To such extent, Section 3179 was applicable during this entire period to income taxes. It seems to us unlikely that Congress intended that Section II(F) act as a repeal *pro tanto* only to the limited extent of taxpayers filing a false return, but keep it alive as to persons other than a taxpayer filing a false return or giving a false statement in support of a return.

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[5] As Section 3616(b).

"We believe that the Court may also have fallen into serious error in its statement that the scope of Section 3616(a) "had been shrunk by a series of specific enactments that had the potency of implied repeals." At page 27 of the Government's brief in this case is an impressive list of specific criminal provisions with respect to specific taxes. This list immediately follows a statement appearing in the Government's brief at page 26 that, "In the income tax field, the provision, first appearing in the 1924 Act, that 'any person who willfully attempts in any manner to evade or defeat any tax imposed by this chapter or the payment thereof, shall . . . be guilty of a felony' was the 'capstone of a system of sanctions . . .'"

As we have pointed out above, the sanctions provided in the 1924 Act applied to all forms of taxes, there being no separate criminal provision with respect to income taxes. Thus, the reference in the above quotation from the Government's brief to the word "chapter" was erroneous. The word "Act" appears in the statute, and not the word "chapter."

At page 21 of our brief, we pointed out that, with the exception of the Revenue Act of 1932 which contained a separate penalty provision in the case of gift taxes (Section 525), none of the Revenue Acts from 1924 through 1938 contained any separate criminal provision in the case of taxes other than income taxes. A separate criminal penalty for excise taxes originally contained in Section 614 of the Revenue Act of 1932, as first introduced in Congress, did not become law. Thus, the criminal penalty provisions contained in the 1939 Code and set forth at page 27 of the Government's brief are all counterparts of the 1924 Revenue Act (Section 1017(a) and (b)). Congress did not at any

U.S. 988. In the first two cases cited, the Government specifically disagreed with the contrary conclusion that had been reached by the Eighth Circuit. *Dillon* v. *United States*, 218 F. 2d 97; *Berra* v. *United States*, 221 F. 2d 590.

In the present case, just two months after its submission in *Costello*, the Government has executed a complete about-face, and now argues that § 3616(a) is inapplicable to income tax returns. Memorandum for the United States, *passim*, hereinafter cited simply as U.S. Memo.

It is the position of *amicus curiae* that the Government was correct in *Dillon*, *Berra*, and *Costello*; that its present change of view is not well taken; that § 3616(a) does apply to income tax returns; and that there is accordingly an area of overlap between § 3616(a) and § 145(b) of the 1939 Internal Revenue Code.

The further question as to the consequence of that overlap is adequately covered by the other briefs on file and will not be discussed in the present brief.

I

The derivation of § 3616(a) is actually extremely easy to trace:

A. Section 3616(a) of the Internal Revenue Code of 1939 was derived from R. S. § 3179. See Appendix A to IRC of 1939, "Derivation of Internal Revenue Code," 53 Stat. App. p. xxxii, *s.v.* § 3616; Appendix B to *id.*, "Statutes included in Internal Revenue Code", 53 Stat. App. p. xl, *s.v.* R. S. § 3179. This derivation seems not to be in dispute.

B. In turn, R. S. § 3179 was derived from Sec. 15 of the Act of June 30, 1864, 13 Stat. 223, 227. See side note to R. S. § 3179 in the 1874 edition of the R. S., p. 614; *id.* in the 1878 edition, p. 611.

C. The Act of June 30, 1864, *supra*, imposed an income tax in its §§ 116-123, 13 Stat. at 281-285. Plainly, then,

Section 15 of the 1864 Act applied to false or fraudulent income tax returns when first enacted. This, again, is not in dispute. From that premise it necessarily follows that § 3616(a) still applies to the false or fraudulent income tax returns, for the reason that the meaning of a statute does not change simply because it passes through one or more revisions without changes in its substantive language. E.g., *Nye v. United States*, 313 U.S. 33; *Logan v. United States*, 144 U.S. 263, 302, and cases there cited.

D. Thus the genealogy of § 3616(a) is clear, and need not be obfuscated, as the Government unnecessarily proceeds to do (U. S. Memo. 5), by references to cognate legislation passed in 1798, 1861, and 1862, which was not carried into the Revised Statutes.

II

Sec. 3179 of the Revised Statutes was never repealed, either expressly or by implication, but on the contrary was specifically reenacted.

A. The Government admits (U. S. Memo. 6-7) that the applicability of R. S. § 3179 to income tax returns survived the repeal of the Civil War income tax and remained in force so as to govern returns filed pursuant to the income tax imposed by the Act of 1894. But it argues that in 1909 (U. S. Memo. 7) "Congress for the first time enacted a specific penal provision applicable to the income tax," and, since that latter provision involved the same penalties as R. S. § 3179, that "in relation to the income tax the general provision of Section 3179 was superseded *pro tanto* by the specific provision in the 1909 act."

The fallacy of the foregoing argument lies in its premise, for as a matter of law the 1909 Act did not levy an income tax. In the period between the decision of this Court that held the 1894 income tax unconstitutional (*Pollock v. Farmers' Loan & T. Co.*, 157 U.S. 429, 158 U.S. 601), and the effective date of the Sixteenth Amendment, Congress

could not and did not attempt to levy any income tax. Accordingly what was involved in the 1909 Act was an excise tax on corporations measured by income, and not an income tax. See *Flint* v. *Stone-Tracy Co.*, 220 U.S. 107, which sustained the constitutionality of the corporate excise tax imposed by the 1909 Act. Moreover, the penalty provision of the 1909 Act (Sec. 38 (Eighth), 36 Stat. at 117) applied in terms only to the filing of a false or fraudulent return with intent to defeat or evade "the assessment required by this section to be made." It was not general legislation.

In the face of this restrictive language in the penal provision of the 1909 Act, it is simply not possible, particularly when the nature of the tax imposed is borne in mind, to reach the conclusion now sought to be drawn by the Government, of a general supersession of R. S. § 3179 "in relation to the income tax."

B. The first true income tax law subsequent to 1894 was the Act of Oct. 3, 1913, c. 16, 38 Stat. 114. The penalty provision thereof, § II(F), 38 Stat. at 171, with its maximum of a year's imprisonment and a $2000 fine, was, as the Government correctly points out (U. S. Memo. 8), inconsistent with the penalty imposed by R. S. § 3179. The Government argues that the 1913 provision "implicitly qualified" § 3179, citing cases to the effect that a later provision for a heavier penalty necessarily supersedes an earlier provision carrying a less severe one. Actually, it would seem that, since both R. S. § 3179 and § II(F) of the 1913 Act remained in force, the principle more appropriately invoked is the rule that, where two penalties cover the same offense, the lesser necessarily governs. *Prince* v. *United States*, 352 U.S. 322; *Bell* v. *United States*, 349 U.S. 81, 83; *United States* v. *Universal C. I. T. Corp.*, 344 U.S. 218, 221-222; *Fong Haw Tan* v. *Phelan*, 333 U.S. 6, 10. But it is not necessary to resolve this question, because, since § II(F) by its terms was restricted to "the assess-

ment required by this section to be made," it plainly can not be construed to have effected a permanent repeal of R. S. § 3179 with respect to the latter's applicability to all income tax returns in the future. Yet that untenable conclusion is actually involved in the Government's argument at this juncture (U. S. Memo. 8).

C. The penalty prescribed by Section 18 of the Revenue Act of 1916 (Act of Sept. 8, 1916, c. 463, 39 Stat. 756, 775; later expressly amended, in particulars not here material, by § 1209 of the Revenue Act of 1917, c. 63, 40 Stat. 300, 336) was the same as that set forth in § 11(F) of the 1913 Act. Again, the 1916 penalty was limited to a false return affecting "the assessment required by this title to be made." The transitory aspect of the 1913 penalty provision was emphasized by its repeal, except in respect of taxes already accrued, by Section 24 of the 1916 Act (39 Stat. at 776). And other provisions of the 1916 Act negative any notion that Congress ever supposed that it was repealing or permanently amending R. S. § 3179.

Section 16 of the 1916 Act, 39 Stat. at 773-775, expressly amended R. S. §§ 3167, 3172, 3173, and 3176. Plainly, then, Congress was concerned with possible inconsistencies between the provisions of the Revised Statutes relating to internal revenue, and those of the new act, and took appropriate steps to weld all of them into a coherent and consistent body of law. The circumstance that, after amending the enumerated sections of the Revised Statutes, R. S. § 3179 was left intact, unamended and unrepealed, is surely eloquent evidence that Congress intended that latter provision to stand.

D. We come now to the Revenue Act of 1917, which, according to the Government (U. S. Memo. 8), "after the usual prohibition against false or fraudulent returns, added the new misdemeanor of 'evad[ing] or attempt[ing] to evade any tax' imposed by the act."

This is somewhat less than full disclosure. Sec. 1004 of the 1917 Act, 40 Stat. at 325, was in pertinent part as follows:

> "That whoever fails to make any return required by this Act or the regulations made under authority thereof within the time prescribed or who makes any false or fraudulent return, and whoever evades or attempts to evade any tax imposed by this Act or fails to collect or truly to account for and pay over any such tax, shall be subject to a penalty of not more than $1,000, or to imprisonment for not more than one year, or both, at the discretion of the court, and in addition thereto a penalty of double the tax evaded * * *."

What the 1917 Act did, therefore, was two-fold: First, it removed the inconsistency between R. S. § 3179 and the particular income tax act with respect to the penalty for making a false return, by making the penalties under each identical; and, second, it added the new offense of evading or attempting to evade the tax.

It seems fairly clear, therefore, that Congress in the 1917 Act distinguished between the simple making of a false return, on the one hand, and the evasion or attempted evasion of the tax in any other manner, on the other.

E. The Government argues (U. S. Memo. 8) that, insofar as there were two offenses in 1917, they were merged by the penalty provision of the Revenue Act of 1918. Sec. 253 of that law (40 Stat. at 1085) did not specifically mention the filing or making of false or fraudulent returns, but denounced only the taxpayer "who willfully attempts in any manner to defeat or evade the tax imposed by this title * * *." It is argued by the Government (U. S. Memo. 8) that "This enlargement eliminated the need for the specific prohibition against filing a false or fraudulent return, and from 1918 through 1938 none of the revenue acts prohibited in terms the filing of false or fraudulent returns."

But the Government's conclusion does not follow from the premise.

To begin with, the maximum penalty imposed by § 253 of the 1918 Act was a $10,000 fine and a year's imprisonment. If, as the Government argues, § 253 covered the filing of a false return, its maximum would be inconsistent with the year and $1000 penalty which was the maximum in R. S. § 3179. But it is very easy to avoid any inconsistency, as follows:

Section 1004 of the 1917 Act, *supra*, distinguished between the two offenses of (a) filing a false, etc., return and (b) attempting to evade the tax. The 1917 Act denounced both offenses in a single section and prescribed the identical penalty for each. The 1918 Act, on the other hand, denounced (b) in its § 253, with a maximum fine of $10,000, and relegated the punishment of (a) to the provisions of R. S. § 3179. This construction, which avoids both inconsistency as well as any discussion of implied repeal, is fortified by the circumstance that, in § 1317 of the 1918 Act, 40 Stat. at 1146-1148, Congress expressly amended R. S. §§ 3164, 3165, 3167, 3172, 3173, and 3176. It neither amended nor repealed R. S. § 3179, but on the contrary, as petitioner has pointed out (Pet. Br. 19), made all existing administrative provisions of the internal revenue laws applicable to the income tax imposed by the 1918 Act. Sec. 1305, 40 Stat. at 1142.

It therefore necessarily follows that, with respect to punishing the simple filing of false returns, Congress intended to rely on R. S. § 3179, and that it is the latter intention which explains the fact (U. S. Memo. 8) that "from 1918 through 1938 none of the revenue acts prohibited in terms the filing of false or fraudulent returns." And the reason for that omission is plain. The mere filing of false or fraudulent income tax returns did not need to be specifically prohibited in successive revenue acts, since such offenses were amply covered by the permanent provisions of R. S. § 3179.

F. In 1939, Congress enacted the Internal Revenue Code, in order, as the title of the Act indicates, "To consolidate and codify the internal revenue laws of the United States."

By 1939, the offense of attempting to evade the income tax in any manner had been a felony for some fifteen years, since the Revenue Act of 1924 (U. S. Memo. 8-9). Moreover, felony prosecutions for income tax evasion had become a part of the pattern of federal criminal prosecution which were well known and which had obtained public acceptance. If, then, the cognizant Congressional Committees and their expert technical staffs had been of the view that income tax evasion in its least complicated form, viz., the filing of a false or fraudulent return, deserved to be dealt with on the footing of felony, those agencies, as well as the Congress itself, were presented, in the course of the laborious codifying process, with an opportunity to eliminate every obsolescent statutory excrescence that remained from earlier days, and which reflected a different view of the social consequences of tax evasion in any form.

And what did Congress do when confronted with that opportunity? It reenacted R. S. § 3179 as § 3616(a) of the 1939 Internal Revenue Code, and it specifically provided in § 61 of the Code that all administrative provisions should be applicable to income taxes.

Section 3616(a) was a part of Subchapter B, Determination of Tax Liability, which in turn was a part of Chapter 34, Information and Returns, which in its turn was a part of Subtitle D of the Code, entitled General Administrative Provisions. While, of course, Congress stated in § 6 of the Act of Feb. 10, 1939 (53 Stat. 1a) that no inference of legislative construction should be drawn by reason of the location of any particular section, cf. *United States* v. *Dixon*, 347 U.S. 381, Section 61 of the Code would be meaningless if it were not possible to consider as administrative provi-

sions sections which were not only so labelled, but which were plainly administrative in substance.

The only conclusion possible, therefore, is that R. S. § 3179 was not only never repealed, but that Congress reaffirmed its provisions by specifically reenacting them.

III

It follows from the foregoing that, as the Government repeatedly argued in the past, there is an overlap between § 145(b) and § 3616(a) with respect to the filing of false or fraudulent income tax returns. The consequences of that overlap are adequately treated by the briefs already on file, and, as has been pointed out, will not be repeated here.

One additional comment will suffice. In the *Dillon* case (Br. Op., No. 629, Oct. T. 1954, at pp. 7 *et seq.*), the Government disclosed that § 3616(a) had frequently been invoked to prosecute minor income tax offenders whose acts were thought not to rise to the level of felony. See also U. S. Memo. 23, note 4, where it is said that "Even if it should be held that the offenses in these cases were laid under the wrong statute (Section 3616(a)), they were of course cognizable under Section 145(b)."

Of course the citation of the statute is no part of the indictment. Of course a mis-citation of the applicable statute is immaterial just so long as the acts charged in the indictment constitute a crime under any statute. But the Government does not explain how it could properly prosecute for misdemeanor when, on its present view, the only statute denouncing the filing of a false income tax return dealt with felony. Certainly if a defendant charged with filing a false income tax return had been prosecuted by information laid under § 3616(a), it is no answer to say that, if § 3616(a) is inapplicable to income tax returns, the prosecution is still valid because the acts charged amount to

felony in violation of § 145(b). For, plainly, an offense under § 145(b) can, in the absence of waiver, be prosecuted only by indictment (Rule 7(a), F. R. Crim. P.)—and the waiver must be an understanding one and must be made in open court. Rule 7(b), F. R. Crim. P.

Otherwise stated, if the Government is now right in saying that § 3616(a) has no application to the income tax, then every income tax violator heretofore prosecuted by information laid under that section has been illegally prosecuted.

It is against the foregoing background that the Government's latest expression must be evaluated. It now says (U. S. Memo. 14, note 22):

> "In view of the uncertainty surrounding the question whether Section 3616(a) applies to income tax violations, the Attorney General has directed that, pending definitive adjudication of the question by this Court, no prosecutions for income tax violations be instituted under that section."

The quoted statement, it is submitted, is quite meaningless on any footing.

If, as the Government seems to imply in its footnote 4, the question of § 3616(a) versus § 145(b) is simply one of citation, the matter quoted in its footnote 22 means no more than a promise to use a different citation in the future. But if the question is viewed as one of substance, involving the difference between prosecution by indictment or by information, then, as has been seen, every prosecution for income tax violations under § 3616(a) commenced by information has been illegal; for if § 3616(a) does not apply to income tax violations, then there is no misdemeanor provision prohibiting the filing of false income tax returns.

That being so, the Government should, if its recent about face is anything more than a tactical shift in the course of litigation, not only offer not to prosecute income tax viola-

tions under § 3616(a) in the future, it should undertake to recommend presidential pardons for all individuals convicted in the past of income tax violations prosecuted by informations laid under § 3616(a); it should likewise offer to sponsor appropriate legislation to refund fines collected in such prosecutions; and, if terms of imprisonment were actually served following such prosecutions, it should similarly offer to confess judgments in suits brought by the affected defendants to recover damages for unjust conviction and imprisonment pursuant to 28 U.S.C. § 2513.

CONCLUSION

For the foregoing reasons, this Court should hold that § 3616(a) of the Internal Revenue Code of 1939 applies to income tax returns.

Respectfully submitted.

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APRIL 1957.